



CHESTER J. CULVER  
GOVERNOR

## OFFICE OF THE GOVERNOR

PATTY JUDGE  
LT. GOVERNOR

May 26, 2009

The Honorable Michael Mauro  
Secretary of State  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

I hereby transmit:

**Senate File 476**, an Act relating to a quality assurance assessment program, nursing facility reimbursements, and providing monetary penalties, contingencies, and effective dates.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Culver", written over the printed name.

Chester J. Culver  
Governor

CJC:bdj

cc: Secretary of the Senate  
Chief Clerk of the House





SENATE FILE 476

AN ACT

RELATING TO A QUALITY ASSURANCE ASSESSMENT PROGRAM, NURSING  
FACILITY REIMBURSEMENTS, AND PROVIDING MONETARY PENALTIES,  
CONTINGENCIES, AND EFFECTIVE DATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

QUALITY ASSURANCE ASSESSMENT PROGRAM

Section 1. NEW SECTION. 249L.1 TITLE. This chapter shall be known and may be cited as the "Quality Assurance Assessment Program".

Sec. 2. NEW SECTION. 249L.2 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of human services.
2. "Direct care worker" means an employee of a nursing facility who holds a nursing assistant certification, is employed for the purpose of nursing assistance, and provides direct care to residents, regardless of the employee's job title.

3. "Gross revenue" means all revenue reported by the nursing facility for patient care, room, board and services, but does not include contractual adjustments, bad debt, Medicare revenue, or revenue derived from sources other than nursing facility operations including but not limited to nonoperating revenue and other operating revenue.

4. "Medically indigent individual" means an individual eligible for coverage under the medical assistance program who is a resident of a Medicaid-certified nursing facility.

5. "Nonoperating revenue" means income from activities not relating directly to the day-to-day operations of a nursing facility such as gains on the disposal of a facility's assets, dividends, and interest from security investments, gifts, grants, and endowments.

6. "Nursing facility" means a licensed nursing facility as defined in section 135C.1 that is a freestanding facility or a nursing facility operated by a hospital licensed pursuant to chapter 135B, but does not include a distinct-part skilled nursing unit or a swing-bed unit operated by a hospital, or a nursing facility owned by the state or federal government or other governmental unit.

7. "Other operating revenue" means income from nonpatient care services to patients and from sales to and activities for persons other than patients which may include but are not limited to such activities as providing personal laundry service for patients, providing meals to persons other than patients, gift shop sales, or vending machine commissions.

8. "Patient day" means a calendar day of care provided to an individual resident of a nursing facility that is not reimbursed under Medicare, including the date of admission but not including the date of discharge, unless the dates of admission and discharge occur on the same day, in which case the resulting number of patient days is one patient day.

9. "Uniform tax requirement waiver" means a waiver of the uniform tax requirement for permissible health care-related taxes as provided in 42 C.F.R. § 433.68(e)(2)(i) and (ii).

Sec. 3. NEW SECTION. 249L.3 QUALITY ASSURANCE ASSESSMENT -- IMPOSED -- COLLECTION -- DEPOSIT -- DOCUMENTATION -- CIVIL ACTIONS.



1. a. A nursing facility in this state shall be assessed a quality assurance assessment for each patient day for the preceding quarter.

b. The quality assurance assessment shall be implemented as a broad-based health care-related tax as defined in 42 U.S.C. § 1396b(w)(3)(B).

c. The quality assurance assessment shall be imposed uniformly upon all nursing facilities, unless otherwise provided in this chapter.

d. The aggregate quality assurance assessments imposed under this chapter shall not exceed the lower of three percent of the aggregate non-Medicare revenues of a nursing facility or the maximum amount that may be assessed pursuant to the indirect guarantee threshold as established pursuant to 42 C.F.R. § 433.68(f)(3)(i), and shall be stated on a per patient day basis.

2. The quality assurance assessment shall be paid by each nursing facility to the department on a quarterly basis after the nursing facility's medical assistance payment rates are adjusted to include funds appropriated from the quality assurance trust fund for that purpose. The department shall prepare and distribute a form upon which nursing facilities shall calculate and report the quality assurance assessment. A nursing facility shall submit the completed form with the assessment amount no later than thirty days following the end of each calendar quarter.

3. A nursing facility shall retain and preserve for a period of three years such books and records as may be necessary to determine the amount of the quality assurance assessment for which the nursing facility is liable under this chapter. The department may inspect and copy the books and records of a nursing facility for the purpose of auditing the calculation of the quality assurance assessment. All information obtained by the department under this subsection is confidential and does not constitute a public record.

4. The department shall collect the quality assurance assessment imposed and shall deposit all revenues collected in the quality assurance trust fund created in section 249L.4.

5. If the department determines that a nursing facility has underpaid or overpaid the quality assurance assessment,

the department shall notify the nursing facility of the amount of the unpaid quality assurance assessment or refund due. Such payment or refund shall be due or refunded within thirty days of the issuance of the notice.

6. a. A nursing facility that fails to pay the quality assurance assessment within the time frame specified in this section shall pay, in addition to the outstanding quality assurance assessment, a penalty of one and five-tenths percent of the quality assurance assessment amount owed for each month or portion of each month that the payment is overdue. However, if the department determines that good cause is shown for failure to comply with payment of the quality assurance assessment, the department shall waive the penalty or a portion of the penalty.

b. If a quality assurance assessment has not been received by the department by the last day of the month in which the payment is due, the department shall withhold an amount equal to the quality assurance assessment and penalty owed from any payment due such nursing facility under the medical assistance program.

c. The quality assurance assessment imposed under this chapter constitutes a debt due the state and may be collected by civil action, including but not limited to the filing of tax liens, and any other method provided for by law.

d. Any penalty collected pursuant to this subsection shall be credited to the quality assurance trust fund.

7. If federal financial participation to match the quality assurance assessments made under this section becomes unavailable under federal law, the department shall terminate the imposition of the assessments beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

Sec. 4. NEW SECTION. 249L.4 QUALITY ASSURANCE TRUST FUND -- LIMITATIONS OF USE -- REIMBURSEMENT ADJUSTMENTS TO NURSING FACILITIES.

1. A quality assurance trust fund is created in the state treasury under the authority of the department. Moneys received through the collection of the nursing facility quality assurance assessment imposed under this chapter and any other moneys specified for deposit in the trust fund shall be deposited in the trust fund.



2. Moneys in the trust fund shall be used, subject to their appropriation by the general assembly, by the department only for reimbursement of services for which federal financial participation under the medical assistance program is available to match state funds. Any moneys appropriated from the trust fund for reimbursement of nursing facilities, in addition to the quality assurance assessment pass through and the quality assurance assessment rate add-on which shall be used as specified in subsection 5, paragraph "b", shall be used in a manner such that no less than thirty-five percent of the amount received by a nursing facility is used for increases in compensation and costs of employment for direct care workers, and no less than sixty percent of the total is used to increase compensation and costs of employment for all nursing facility staff. For the purposes of use of such funds, "direct care worker", "nursing facility staff", "increases in compensation", and "costs of employment" mean as defined or specified in this chapter.

3. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of the quality assurance assessment program. The moneys deposited in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

4. The department shall adopt rules pursuant to chapter 17A to administer the trust fund and reimbursements made from the trust fund.

5. a. The determination of medical assistance reimbursements to nursing facilities shall continue to be calculated in accordance with the modified price-based case-mix reimbursement system as specified in 2001 Iowa Acts, chapter 192, section 4, subsection 2, paragraph "c". In addition, moneys that are appropriated from the trust fund for reimbursements to nursing facilities that serve the medically indigent shall be used to provide the following nursing

facility reimbursement rate adjustment increases within the parameters specified:

(1) A quality assurance assessment pass-through. This rate add-on shall account for the cost incurred by the nursing facility in paying the quality assurance assessment, but only with respect to the pro rata portion of the assessment that correlates with the patient days in the nursing facility that are attributable to medically indigent residents.

(2) A quality assurance assessment rate add-on. This rate add-on shall be calculated on a per-patient-day basis for medically indigent residents. The amount paid to a nursing facility as a quality assurance assessment rate add-on shall be ten dollars per patient day.

(3) Nursing facility payments for rebasing pursuant to 2001 Iowa Acts, chapter 192, section 4, subsection 3, paragraph "a", subparagraph (2).

b. (1) It is the intent of the general assembly that priority in expenditure of rate adjustment increases provided to nursing facilities through the quality assurance assessment be related to the compensation and costs of employment for nursing facility staff.

(2) If the sum of the quality assurance assessment pass-through and the quality assurance assessment rate add-on is greater than the total cost incurred by a nursing facility in payment of the quality assurance assessment, no less than thirty-five percent of the difference shall be used to increase compensation and costs of employment for direct care workers and no less than sixty percent of the difference shall be used to increase compensation and costs of employment for all nursing facility staff.

(3) For the purposes of determining what constitutes increases in compensation and costs of employment the following shall apply:

(a) Increases in compensation shall include but are not limited to starting hourly wages, average hourly wages paid, and total wages including both productive and nonproductive wages, and as specified by rule of the department.

(b) Increases in total costs of employment shall include but are not limited to costs of benefit programs with specific reporting for group health plans, group retirement plans,

leave benefit plans, employee assistance programs, payroll taxes, workers' compensation, training, education, career development programs, tuition reimbursement, transportation, and child care, and as specified by rule of the department.

(c) Direct care workers and nursing facility staff do not include nursing facility administrators, administrative staff, or home office staff.

(4) Each nursing facility shall submit to the department, information in a form as specified by the department and developed in cooperation with representatives of the Iowa caregivers association, the Iowa health care association, the Iowa association of homes and services for the aging, and the AARP Iowa chapter, that demonstrates compliance by the nursing facility with the requirements for use of the rate adjustment increases and other reimbursements provided to nursing facilities through the quality assurance assessment.

6. The department shall report annually to the general assembly regarding the use of moneys deposited in the trust fund and appropriated to the department.

Sec. 5. EFFECTIVE AND IMPLEMENTATION DATES. This division of this Act takes effect upon enactment. However, actual implementation of this division of this Act shall be in accordance with the following:

1. If the department in consultation with the governor determines that the requests relating to waivers and the medical assistance state plan amendment as described in division II of this Act would adversely affect the existing IowaCare waiver, and the department does not submit such requests to the United States department of health and human services, this division of this Act shall not be implemented.

2. If the department in consultation with the governor determines that the requests relating to waivers and the medical assistance state plan amendment as described in division II of this Act would not adversely affect the existing IowaCare waiver, and does submit such requests to the United States department of health and human services, this division of this Act shall only be implemented if the department receives approval of the requests relating to the waivers and medical assistance state plan amendment as specified in division II of this Act, and in accordance with the provisions specified in division II of this Act.



DIVISION II  
DIRECTIVES TO DEPARTMENT OF HUMAN SERVICES  
AND CONTINGENCIES

Sec. 6. DEFINITIONS. As used in this division of this Act, "department", "nursing facility", "patient day", and "uniform tax requirement waiver" mean as defined in section 249L.2, as enacted in this Act.

Sec. 7. DIRECTIVES TO DEPARTMENT OF HUMAN SERVICES. No later than June 30, 2009, unless the department in consultation with the governor determines that such requests will adversely affect the existing IowaCare waiver, the department shall request approval of all of the following from the United States department of health and human services:

1. An amendment to the terms and conditions of the IowaCare waiver to eliminate the provision in which the state agrees to refrain from imposing any provider tax during the pendency of the demonstration waiver for IowaCare.

2. A uniform tax requirement waiver to allow the state to impose varying levels of taxation on providers based on specified criteria. It is the intent of the general assembly that the uniform tax requirement waiver sought by the department be structured to minimize the negative fiscal impact on nursing facilities.

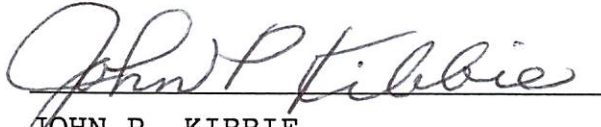
3. A medical assistance state plan amendment to revise the state nursing facility reimbursement methodology to, in part, allow the medical assistance program to reimburse nursing facilities for the medical assistance portion of the provider tax paid by the nursing facilities.

Sec. 8. CONTINGENCY PROVISIONS. The quality assurance assessment created in this Act shall accrue beginning on the first day of the calendar quarter following the date of approval of the state plan amendment. However, accrued quality assurance assessments shall not be collected prior to completion of both of the following:

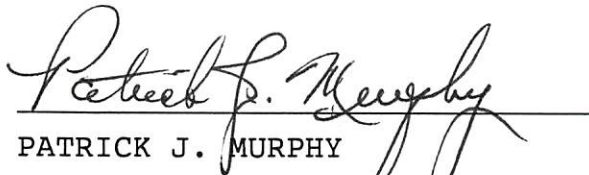
1. The approval of the waivers and the medical assistance state plan amendment by the centers for Medicare and Medicaid services of the United States department of health and human services.

2. An appropriation by the general assembly to implement the nursing facility provider reimbursements as provided in this Act.

Sec. 9. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

  
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JOHN P. KIBBIE

President of the Senate

  
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PATRICK J. MURPHY

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 476, Eighty-third General Assembly.

  
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MICHAEL E. MARSHALL

Secretary of the Senate

Approved May 26<sup>th</sup>, 2009

  
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CHESTER J. CULVER

Governor